IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13255 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BALU VISHNU SELE

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 13255 of 2000

MR SATISH R PATEL for Petitioner No. 1

Mr. HL Jani, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/07/2001

ORAL JUDGEMENT

Heard learned advocate Mr. Patel for the petitioner and Mr. Jani, learned AGP for the respondent State. In this petition, the petitioner has challenged the impugned order of detention dated 23.11.2000 passed

by the detaining authority under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short). The grounds of detention have been communicated to the petitioner under section 9(1) of the PASA Act and the petitioner has been detained at Junagadh District Jail as Class II Detenu. In all, five offences have been registered against the petitioner under the provisions of the Bombay Prohibition Act. The petitioner has been considered to be the bootlegger. The last offence has been registered against the petitioner on 13.10.2000. The statement of secret witnesses were recorded on 24.10.2000 and the same were verified by the detaining authority on 14th November, 2000. The unregistered offence as per the grounds of detention is dated 5.10.2000, 8.10.2000 and 11.10.2000 as per the statements given by the secret witnesses.

2. Learned advocate Mr. Patel has raised various contentions while challenging the impugned order of detention. However, according to him, one contention is enough to set aside the impugned order of detention. He has submitted that the petitioner has been branded as a bootlegger as defined under section 2(b) of the PASA Act. According to him, the petitioner was on bail in respect of the registered offences. According to him, as per the grounds of detention, the last offence was registered against the petitioner on 13.10.2000 and the impugned order of detention has been passed by the detaining authority on 23.11.2000 and, therefore, there was delay in passing the impugned order of detention, of about more than one month which has vitiated the subjective satisfaction of the detaining authority and the same has remained unexplained because no reply has been filed by the State Government. He has relied upon the decision of this Court reported in 1997 (1) GLH page 381.

Learned AGP Mr. HL Jani has submitted that looking to the activities which were carried out by the petitioner and also in view of the registration of five offences against the petitioner and two other unregistered offences as per the grounds of detention, there were compelling circumstances and there was no other option with the detaining authority except to detain him under the PASA Act and, therefore, the detaining authority has, after considering all the relevant facts and material on record, passed the impugned order of detention to prevent the petitioner from carrying on such illegal anti social activities which were disturbing the maintenance of public order. He has, therefore, submitted that the detaining authority

has passed legal and valid order and, therefore, this court should not interfere with the same. He has submitted that this petition is required to be dismissed.

I have considered the submissions made by both the learned advocates and looking to the undisputed facts which were on record, last offence registered against the petitioner is dated 13.10.2000 and the impugned order of detention has been passed on 23.11.2000. During the interregnum period, from 13.10.2000 23.10.2000, no offence either registered or unregistered has been alleged to have been committed by the petitioner. In view of these facts, delay in passing the impugned order of detention which has remained unexplained has vitiated the order of detention. The respondents have not filed any affidavit in reply explaining the delay in passing the impugned order of detention. Specific contention about delay in passing of the impugned order of detention has been raised by the petitioner in para 6 of the memo of petition.

In light of these facts of the present case, it would be appropriate to make reference of the decision of this Court in case of Elesh Nandubhai Patel versus Commissioner of Police reported in 1997 (1) GLH 381. Para 21 of the said decision reads as under:

"In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 5, 1996 i.e. after a delay of five months and fifteen days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October, 1`996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash v. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth

v. S. Ramamurthy reported in 1993 (2) Suppli. SCC 61."

In view of the observations made by this Court in the aforesaid decision and also considering the undisputed facts which are on record that more than one month has passed from the date of last registered offence and that delay has remained unexplained by the detaining authority, I am of the view that the order of detention is required to be quashed and set aside.

For the reasons recorded hereinabove, the petition succeeds and the same is allowed. The order of detention dated 223.11.2000 is vitiated and resulted to quash and set aside. The detenu Balu Vishnu Shele who has been detained at the District Jail, Junagadh be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. No order as to costs. Direct Service is Permitted.

3.7.2001. (H.K. Rathod,J.)

Vyas